

REMARKS

This is in response to the action of August 29, 2003.

The application currently includes two independent claims, claims 1 and 23. Claims 1-28 currently stand rejected under 35 USC §103 as unpatentable over Pepple in view of Sehr and Pearson et al.

Applicant has carefully reviewed the examiner's reasons for rejecting the claims on the basis of the teachings of Pepple, Sehr and Pearson. Applicant offers the following remarks in order to clarify the differences between applicant's position on patentability of the amended claims and the examiner's position concerning the specific teaching of each of the applied references.

As the examiner has pointed out, the primary reference to Pepple discloses the use of electronic trading cards (ETCs). Pepple teaches that the cards can be used in a digital media and furthermore can be traded, bought, sold, auctioned and collected on-line. Furthermore, it is recognized that Pepple teaches that his ETCs can be used in various video games, including adventure games.

However, the video game control systems using the ETCs described in Pepple are self-contained, using only information from ETCs to carry out the game. The disclosure in Pepple concerning on-line activities involves the capability of a computer or an advanced video game system only of accessing ETC files and utilities at a remote location which support browsing, displaying, trading, buying and selling ETCs.

There are two significant differences between the Pepple system and the system set out in applicant's amended claim 1. First, while Pepple teaches the use of trading cards/ETCs which can be traded on line and further teaches the use of the ETCs in a video game system, there is no teaching in Pepple of connecting the control system portion of a video game system to a remote computer through a global computer network and downloading additional information directly from the remote computer to the control system of the video game system, which is capable of receiving the downloaded information and then using both the downloaded information, which is not on a specific trading card (or ETC) and the character information on trading cards, to carry out the game. Pepple's information for carrying out the video game comes only in the medium of the ETCs.

Again, while the information on the Pepple ETCs can be

updated on-line, it is only information on the ETCs which is used to carry out the video game. In applicant's claimed invention, game information can be provided by the website directly to the control system or the local video game, without it having to appear on individual cards.

Second, as the examiner has pointed out, there is no teaching in Pepple of verifying that the individual players of the game have the right to use the trading cards selected by them in the playing of the selected video game. Claim 1 includes a specific limitation that the processing system at the remote website verifies that the players of the video game have a right to use their selected trading cards in the playing of the selected video game.

The secondary reference to Sehr does not teach the above two claimed differences. With respect to point two above, Sehr teaches various security means, as the examiner has pointed out, to both authenticate particular cards, to ensure that the card in the possession of a particular user is a validly issued card (not a fake) and also to verify the identity of the cardholder and confirm his/her rightful ownership of the card. Sehr, however, does not disclose the specific system of claim 1. While Sehr verifies the identity of the cardholder and confirms the ownership of the card, it does not verify, independently of ownership, the right to use a card for a selected video game. In applicant's system, a player may acquire the right to use a card in a selected video game, but may not be the owner of the card. The right to use a selected card for a selected video game may come in various ways, including possession. In such cases, the actual owner of the card would not have the right to use the card in playing of the selected video game. The right to use is thus a separate determination from ownership. Only the person having the right to use the card for the selected game would be able to use the card. In applicant's invention, the key issue is the right to use the card for a selected game. In Sehr, the issue is ownership (after the authenticity of the card is determined). The right to use the card for all purposes of the card is assumed in the Sehr system once ownership is confirmed. Right to use for a particular game is a different focus than ownership, which has no restrictions on use in the Sehr system. This is an important difference between applicant's video game system and the collector card of Sehr.

Now with respect to the first point above, while Sehr's system includes the ability to download information from a remote computer with a system configuration which includes a card station,

a card user and a service provider, the downloaded information in Sehr is all directed to and accumulated on the individual collector cards. The cards themselves receive the downloaded information. In applicant's claimed system, which includes a control system for carrying out the video game, the downloaded information goes directly to the control system and not to the cards. Applicant's control system thus can use information from (1) the trading cards and (2) the downloaded information from the website to control the game. This is an important difference. Applicant's arrangement provides a more flexible, varied and complex video game experience than the Sehr arrangement, which downloads information to the cards which then are used in the game. Claim 1 is thus patentable over the cited references.

With respect to claim 23, the examiner's position is that applicant's limitation specifying that the elements have to be in one unit "does little to define patentability of the game". As indicated previously, the unitary, stand-alone configuration of applicant's article is an important structural limitation. There are several advantages. The combining of the three specific elements of the video game into a single unit permits hand-held operation. The claimed arrangement makes the unitary device easy to transport, while still retaining the flexibility of a video game using trading cards, instead of the more conventional hand-held game arrangement. Applicant has admitted that the separate elements are individually well-known. It is the combining of the three separate elements into a single, stand-alone unit which is the invention. Combining the three key elements was not a trivial exercise. It was a novel concept which required invention to carry out successfully. The examiner has not provided any references which teaches or suggests such a combination. The only reasonable conclusion hence is that the combination is patentable. Accordingly, claim 23 is patentable over the cited references.

In view of the above, claims 1 and 23 define patentable subject matter over the references cited; since claims 2-22 depend upon claim 1 and claims 24-28 depend upon claim 23, those claims are also allowable. Note claim 12, which concerns replica cards which may be used in the video game, under specific conditions of verification, instead of using the original card. Neither Pepple nor Sehr teach such a limitation.

This is also to request a three-month extension of time. Enclosed is the required fee of \$475. The Commissioner is authorized to charge any fees or deficiencies or credits to Deposit Account 07-1900.

Respectfully submitted,
JENSEN & PUNTIGAM, P.S.

By Clark A. Puntigam
Clark A. Puntigam, #25, 763
Attorney for Applicant

CAP:PMV
206 448-3200
E-mail: clark@jensenpuntigam.com
Enclosures: Check, Postcard